

**COURT OF APPEALS
DECISION
DATED AND FILED**

March 19, 1998

Marilyn L. Graves
Clerk, Court of Appeals
of Wisconsin

NOTICE

This opinion is subject to further editing. If published, the official version will appear in the bound volume of the Official Reports.

A party may file with the Supreme Court a petition to review an adverse decision by the Court of Appeals. See § 808.10 and RULE 809.62, STATS.

No. 97-0409-CR

STATE OF WISCONSIN

**IN COURT OF APPEALS
DISTRICT IV**

STATE OF WISCONSIN,

PLAINTIFF-RESPONDENT,

V.

EDRON D. BROOMFIELD,

DEFENDANT-APPELLANT.

APPEAL from a judgment and order of the circuit court for Rock County: PATRICK J. RUDE and MICHAEL J. BYRON, Judges. *Affirmed.*

Before Eich, C.J., Vergeront and Roggensack, JJ.

PER CURIAM. Edron Broomfield appeals from a judgment convicting him as a felon possessing a firearm. He also appeals from an order denying postconviction relief. The issue is whether he received effective assistance from trial counsel. Because we conclude that counsel's representation did not prejudice Broomfield, we affirm.

On April 15, 1995, Broomfield was at the apartment of Sandra Gent, also present were Tim and Lisa Vandiver. Gent testified that she saw Broomfield with a handgun in his lap. And, when a certain person drove slowly by the apartment for a second time, she witnessed Vandiver grab the gun off Broomfield's lap and run out the door, followed closely by Broomfield. Gent then heard a shot. Later, Broomfield told her that he fired the shot.

On cross-examination, Gent acknowledged the following exchange in a police interview conducted on April 16, 1995:

Q. A short time later, what took place?

A. A short time later Timothy Vandiver was looking out my kitchen window and said that Michael Cooper was driving by again, so Tim Vandiver took off running outside. [Broomfield] went behind him, and I followed behind [Broomfield], and that is when I heard the shot.

On redirect, Gent acknowledged giving the following answers in the same interview:

Q. So it was a phone conversation that you had with Timothy Vandiver?

A. [Broomfield] got on the phone and apologized. They both apologized to me for what was going on, and they told me [Broomfield] was the one that fired the shot, not Michael Cooper.

Q. Who told you that?

A. [Broomfield].

Q. [Broomfield] told you that he was the one that shot, not Michael Cooper?

A. Correct.

Lisa Vandiver testified to seeing Broomfield holding and loading the handgun that night at Gent's, and also told of seeing Vandiver and Broomfield run out of the apartment and then hearing the shot. Both witnesses agreed that Broomfield left the scene after police were called. In an interview on April 17, Broomfield told police he knew where the gun was, although it was not found where Broomfield said he had hidden it.

During deliberations the jury asked to see the transcript of Gent's April 16 police interview. The court and the attorneys agreed that the court should read to the jury those parts of the transcripts that Gent acknowledged during her testimony, which were the excerpts quoted above. However, due to counsels' shared mistake, the court only read the exchange concerning Broomfield's admission to firing the shot. A juror then explained that the jury actually wanted the transcript to clarify an issue unrelated to either quoted passage. The trial court refused that request, and the jury subsequently returned a guilty verdict. Broomfield now contends that reading the one passage without the other undermined the verdict and entitled him to a new trial. At Broomfield's postconviction hearing, counsel conceded that his agreement to the trial court's reading only one of the passages was a mistake.

To prove ineffective assistance of counsel, the defendant must show that counsel's performance was deficient and that counsel's errors or omissions prejudiced the defense. *State v. Pitsch*, 124 Wis.2d 628, 633, 369 N.W.2d 711, 714 (1985). Prejudice results when there is a reasonable probability that but for counsel's errors the result of the proceeding would have differed. *Id.* at 642, 369 N.W.2d at 719. Whether counsel's performance was deficient and whether it was prejudicial to the defendant are questions of law. *Id.* at 634, 369 N.W.2d at 715.

Here, the State does not contest Broomfield's assertion that counsel performed negligently, but only disputes his argument that the negligence was prejudicial.

There is no reasonable probability of a different result had the court read both passages from Gent's police interview. Gent's testimony was the State's strongest evidence, and the evidence of her prior consistent statement to the police undoubtedly strengthened her credibility. We reject the contention, however, that the determining factor in the verdict was the trial court's rereading of that statement without reading her other one as well. Contrary to Broomfield's assertion, the latter was not exculpatory and did not impeach Gent's testimony to any measurable degree. It showed her response to a question about what happened when Vandiver and Broomfield saw the car drive by. At trial she testified the same way but added details about Broomfield having the gun in his lap, an issue that was of no particular concern to the police at the time of her statement. In no way did that statement reasonably allow the inference that her subsequent testimony about the gun was false. Additionally, as it turned out, the jury's actual concern was with something entirely unrelated to either statement. That fact makes it even more improbable that the jury judged Gent's credibility, and Broomfield's guilt, based on the trial court's reminder of her statement, rather than on her testimony and statement themselves, as well as the other evidence of his gun possession.

By the Court.—Judgment and order affirmed.

This opinion will not be published. *See* RULE 809.23(1)(b)5, STATS.

